

# Terms & Conditions

## Definitions

1. In this Contract, unless the context clearly indicates otherwise:
  - a. **ADRA** means ACTIVE DEBT RECOVERY AUSTRALIA PTY LTD ABN 13 158 106 159.
  - b. **CLIENT** means the party completing the Appointment and Engagement Agreement.
  - c. **Commencement Date** is the date on which the Appointment and Engagement Agreement is signed by the CLIENT.
  - d. **Commission** means the fee payable to ADRA in return for the work to collect an outstanding debt. Commission is payable by the CLIENT on any monies received by ADRA or paid directly by the debtor or on behalf of the debtor to the CLIENT in relation to the debt and is calculated at the prevailing commission rates at the time of invoicing.
  - e. **Debt** means a legitimate charge incurred by a debtor for goods or services which has become the subject of collection action.
  - f. **Debtor** means the person(s) or corporate entity that has incurred a debt with the CLIENT.
  - g. **Deductions** mean but not limited to, special actions charges listed in the Fee Schedule as at the prevailing rates at the time of invoicing, solicitor charges, court charges, enforcement charges, office charges, search fees, disbursements and bank fees charged on Bpay, credit card transactions, EFTs and foreign currency payments received, which are legitimately incurred on behalf of or by the CLIENT and which are calculated at the prevailing rates. Deductions are payable by the CLIENT when any monies are received by ADRA or paid directly by the debtor or on behalf of the debtor, either past or present to the CLIENT until the deduction is fully paid. Deductions are payable in full before commission.
  - h. **Fee Schedule** means the accompanying list of service actions and their associated fees.
  - i. **Services** means debt collection activities including but not limited to payment demands, skip trace actions, credit default actions, solicitors actions and enforcement actions.
  - j. **Statement Date** means Friday of week or prior at the discretion of ADRA.

## Interpretation

2. In this Contract unless the context clearly indicates otherwise:
  - a. a reference to legislation or a legislative provision includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
  - b. a reference to the introduction, a clause, schedule or annexure is a reference to the introduction, a clause, a schedule or an annexure to or of this Contract;

- c. clause headings and the table of contents are inserted for convenience only and do not form part of this Contract;
- d. the agreement form, introduction, schedules (if any) and annexures (if any) form part of this Contract;
- e. a reference to a party shall include reference where applicable to its heirs, successors in title, executors, administrator, receiver or liquidator.

## Commencement of Agreement

3. The CLIENT acceptance shall be effective only when it's Appointment and Engagement Agreement form is received by ADRA by mail, email or facsimile.

## Authority to Receive Monies in Trust

4. The CLIENT gives ADRA authority to direct and accept the CLIENT's debtor receipts into ADRA's trust account on the CLIENT'S behalf, unless agreed otherwise in writing.

## Fee Schedule

5. The Fee Schedule is fixed at the Commencement date and may be amended from time-to-time by ADRA and notified to the CLIENT in writing.

## Provision of Services

6. From the date of instructing ADRA to pursue a debt to the date the debt is paid in full, the CLIENT does so on an exclusive basis and agrees:
  - a. That no other collection agency will be instructed to pursue the same debt.
  - b. That ADRA shall be entitled to charge commission and relevant deductions to the CLIENT on any monies paid directly by the debtor or on behalf of the debtor to the CLIENT in relation to the debt.
  - c. That ADRA shall be entitled to charge commission and relevant deductions to the CLIENT no matter whose actions or who paid for those actions that results in monies being received from the debtor. This includes but is not limited to actions by Lawyers, Agents, Courts, Tribunals, Bailiffs and the CLIENT.
  - d. If ADRA advises that they cannot continue to actively pursue the debt based on commercial reasons, this does not affect the enforcement of clauses 6, 6(a), (b) and (c).
7. The CLIENT covenants that the details of a debt supplied are true and correct and include all information relevant to the debt. Should ADRA suffer loss or expense due to misleading, false or insufficient details being supplied by the CLIENT, the CLIENT agrees to indemnify ADRA in full for such loss or expense.
8. The CLIENT expressly authorises ADRA to perform all acts reasonably necessary to collect a debt including legal and enforcement action. ADRA's can instruct its choice of legal specialists to carry out part or all of the collection process. In the event a legal specialist is appointed to pursue the debt the CLIENT authorises the direction of monies recovered from debtors into ADRA's trust account.

9. In the event where ADRA initiates legal or enforcement action on the CLIENT's request, it may do so at its cost in the first instance and shall be entitled to deduct from monies recovered from the debtor or invoice the legal cost and disbursements incurred.
10. The CLIENT expressly authorises ADRA to perform all acts reasonably necessary to collect a debt including skip tracing searches, credit defaults, solicitor actions, enforcement actions and dispute resolution. In the event where ADRA initiates these actions, it may do so at its cost in the first instance and shall be entitled to deduct from monies recovered from the debtor at the prevailing rates.
11. The CLIENT can authorise ADRA to collect the CLIENT's costs of collection action (debt collection charges, legal, interest and other third party costs) to the debtor, where the CLIENT has determined that they have the right to do so under a written agreement with the debtor and has informed ADRA in writing. When costs of collection are added ('added collection costs') to the debt by the CLIENT agrees that:
  - a. The CLIENT will invoice the debtor for the collection costs.
  - b. All monies paid by the debtor are allocated first to the debt before any added collection costs.
  - c. Commission and deductions are payable by the CLIENT on any monies received by ADRA or paid directly by the debtor or on behalf of the debtor to the CLIENT even if the added collection costs are not recovered or paid by the debtor.
  - d. ADRA will always endeavour to recovery the added collection costs; however ADRA is not responsible for the non-recovery or payment of the added collection costs. Non-recovery or payment does not affect the amount of commission or deductions payable by the CLIENT.
  - e. Commission is not payable on the added collection costs.
  - f. The CLIENT not ADRA are recovering or attempting to recover from a debtor the collection costs.
  - g. ADRA will receive no benefit from the recovery of the CLIENT's collection costs from the debtor.
12. During the time period ADRA is acting for the CLIENT, the CLIENT covenants that ADRA acts exclusively on the debt and the CLIENT or its agents shall not negotiate with nor contact the debtor nor accept less than total payment directly from the debtor. In the event where the CLIENT breaches this clause ADRA shall be entitled to charge commission and deductions as if the debt had been paid in full.

## Payments

13. After collection action begins ADRA will on the next Statement Date forward to the CLIENT a sum equivalent to any monies received on behalf of the CLIENT less any commission and deductions due, calculated according to prevailing rates.
14. The CLIENT irrevocably authorises ADRA to transfer from ADRA's trust account to ADRA's general account any commission and/or deductions due at the Statement Date.

15. The CLIENT covenants that the CLIENT will notify ADRA within one working day of a debt having been paid in whole or in part, whether paid directly by the debtor or on behalf of the debtor. Further, the client agrees that ADRA shall be entitled to charge commission and relevant deductions to the CLIENT.
16. In the event where the CLIENT accepts a return of goods, other goods or services, offset or credit in satisfaction of a debt, ADRA shall be entitled to charge commission based on the original debt value allowed by the CLIENT to the debtor, plus other deductions.
17. The CLIENT'S instructions to ADRA to recover a debt pursuant to this agreement commences from the date of receipt of instructions by ADRA and should the CLIENT thereafter at any time instruct ADRA whether expressly or by conduct (thirty days (30) of non-response to ADRA communication) to terminate recovery proceedings for any reason whatsoever ADRA shall be entitled to charge commission and deductions as at the date of termination regardless of the ultimate outcome of further recovery collection action as if the debt has been paid in full.
18. Unless otherwise specifically stated, all commission rates, prices and amounts listed are exclusive of GST.
19. All GST levied by the Commonwealth Government on ADRA'S commission shall be borne by the CLIENT and ADRA shall provide a Tax Invoice. Payment is due on receipt of invoice.
20. In the event that the CLIENT fails to pay ADRA'S invoice by the due date:
  - a. ADRA is entitled to suspend all further performance of the services for the CLIENT until payment is made in full on all outstanding invoices; and
  - b. ADRA is entitled to charge interest at the Penalty Interest rate of 15% pa on all overdue amounts (including late payment charges and amounts other than the service fee), calculated daily on all monies due but unpaid. Payments received from the CLIENT will be credited first against any interest charge and all such charges shall be payable on demand; and
  - c. In the event that the CLIENT'S payment is dishonoured for any reason the CLIENT shall be liable for any dishonour fees incurred by ADRA; and
  - d. The CLIENT will pay or reimburse to ADRA any costs or expenses incurred by it or its legal advisers and other parties acting on ADRA'S behalf;
  - e. The CLIENT understands that information may be exchanged on any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and may include notifying other credit providers of a default by the CLIENT, as well as information about the CLIENT'S creditworthiness or credit history that credit providers are allowed to exchange under the Privacy Act 1988.

# Terms & Conditions

## Limitation of Liability

21. Both parties warrant that they will not act in any manner which may besmirch the name and reputation of the other.
22. The CLIENT indemnifies, and will hold harmless, ADRA and its officers, employees, shareholders, agents and contractors (those indemnified) from and against any and all damages that those indemnified may sustain or incur arising from or in connection with this agreement.
23. The CLIENT agrees that ADRA shall not under any circumstances be liable for any claim, loss or damage sustained or incurred by the CLIENT or any other party arising in any way as a result of the performance or non-performance of the Services or part thereof.
24. The CLIENT warrants that they have assessed the suitability of the Services for their purpose, and any advice, recommendation, information or representation given or provided by ADRA as to the quality or performance of the Services or their suitability for a particular purpose or otherwise in relation to the Services shall be accepted by the CLIENT at its own risk and without any liability or responsibility on the part of ADRA.
25. ADRA recommends that you obtain independent legal advice from your independent legal practitioner as to whether our Services are appropriate. ADRA does not and is not qualified to give legal advice.
26. The provision of Services does not confer on the CLIENT any license or rights under any patents, trademarks or copyright, which is the property of ADRA or any other person.
27. ADRA shall be bound by no covenants, representations or warranties other than those specified in this Agreement.

## Right of Refusal

28. ADRA reserves the right to refuse to act as agent against any one or more debtors and may at any time by notice in writing; cease to act for the CLIENT in relation to any debt.

## Waiver

29. The failure of ADRA to enforce any right or part of any right under the Contract shall not be considered a waiver of that right or part of a right and shall not prevent ADRA enforcing that right or part of a right in the future.

## Dispute Resolution

30. The CLIENT agrees that if any dispute arises over any form or instruction (including any question of identity, authority or any telephone, facsimile, computer or e-mail order) issued by the CLIENT, the internal records of ADRA will be conclusive evidence of what was instructed or recorded by the CLIENT.

## Notices

31. A notice or other communication required or permitted to be given by a party to another shall be in writing and delivered personally or sent by pre-paid post or facsimile or email to that party's address or facsimile number or email as notified in writing to each party from time to time.

32. A notice or other communication is deemed given if:
  - a. Personally delivered, upon delivery;
  - b. Mailed, on the expiration of two business days after posting;
  - c. Sent by facsimile, on confirmation of successful dispatch by the sender machine, or
  - d. Sent by email.

## Privacy

33. Subject to the Privacy Act 1988, ADRA may collect, use or disclose CLIENT information to agents, contractors and other third parties. In particular, these may include debtors, mailing houses, debt collection / mercantile agents, archivers, valuers, call-centre operators, solicitors, accountants, process servers, bailiffs, funders, securitisers and assignees. The CLIENT expressly authorises such collection and disclosure.

## Jurisdiction

34. This Agreement is deemed to be made in the State of Queensland and the relevant Queensland Court hereunder shall determine all disputes.

## Direct Debit Request (DDR) Agreement

35. This is your Direct Debit Service Agreement with ACTIVE DEBT RECOVERY AUSTRALIA PTY LTD ABN 13 158 106 159. It explains what your obligations are when undertaking a Direct Debit arrangement with us. It also details what our obligations are to you as your Direct Debit provider.
36. Please keep this agreement for future reference. It forms part of the terms and conditions of your Direct Debit Request (DDR) and should be read in conjunction with your DDR authorisation.

## How to Contact Us

37. You can contact us directly or alternatively contact your financial institution. These should be made at least 7 working days prior to the next scheduled drawing date.
38. You may contact us as follows:

Phone: 1300 853 230

Email: support@activedebtrecovery.com.au

Mail: PO Box 6814, Gold Coast Mail Centre, 9726, QLD
39. All communication addressed to us should include your Customer Number.

## Definitions

40. In this agreement, unless the context clearly indicates otherwise:
  - a. **account** means the account held at your financial institution from which we are authorised to arrange for funds to be debited.
  - b. **agreement** means this Direct Debit Request Service Agreement between you and us.
  - c. **banking day** means a day other than a Saturday or a Sunday or a public holiday listed throughout Australia.
  - d. **debit day** means the day that payment by you to us is due.

- e. **debit payment** means a particular transaction where a debit is made.
- f. **direct debit request** means the Direct Debit Request between us and you.
- g. **us or we** means ACTIVE DEBT RECOVERY AUSTRALIA PTY LTD, you have authorised by requesting a Direct Debit Request.
- h. **you** means the customer who has signed or authorised by other means the Direct Debit Request.
- i. **your financial institution** means the financial institution nominated by you on the DDR at which the account is maintained.

## Debiting your account

41. By signing a Direct Debit Request or by providing us with a valid instruction, you have authorised us to arrange for funds to be debited from your account. You should refer to the Direct Debit Request and this agreement for the terms of the arrangement between us and you. We will only arrange for funds to be debited from your account as authorised in the Direct Debit Request. We will only arrange for funds to be debited from your account if we have sent to the address nominated by you in the Direct Debit Request, a billing advice which specifies the amount payable by you to us and when it is due. If the debit day falls on a day that is not a banking day, we may direct your financial institution to debit your account on the following banking day. If you are unsure about which day your account has or will be debited you should ask your financial institution.

## Amendments by us

42. We may vary any details of this agreement or a Direct Debit Request at any time by giving you at least fourteen (14) days written notice.

## Amendments by you

43. You may change, stop or defer a debit payment, or terminate this agreement by providing us with at least 7 days notification by writing to PO Box 6814, Gold Coast Mail Centre, 9726, QLD or by telephoning us on 1300 853 230 during business hours or arranging it through your financial institution, which is required to act promptly on your instructions.

## Your obligations

44. It is your responsibility to ensure that there are sufficient clear funds available in your account to allow a debit payment to be made in accordance with the Direct Debit Request. If there are insufficient clear funds in your account to meet a debit payment:
  - a. you may be charged a fee and/or interest by your financial institution;
  - b. you may also incur fees or charges imposed or incurred by us; and
  - c. you must arrange for the debit payment to be made by another method or arrange for sufficient clear funds

to be in your account by an agreed time so that we can process the debit payment. You should check your account statement to verify that the amounts debited from your account are correct.

## Dispute

45. If you believe that there has been an error in debiting your account, you should notify us directly on 1300 853 230 and confirm that notice in writing with us as soon as possible so that we can resolve your query more quickly. Alternatively you can take it up directly with your financial institution. If we conclude as a result of our investigations that your account has been incorrectly debited we will respond to your query by arranging for your financial institution to adjust your account (including interest and charges) accordingly. We will also notify you in writing of the amount by which your account has been adjusted. If we conclude as a result of our investigations that your account has not been incorrectly debited we will respond to your query by providing you with reasons and any evidence for this finding in writing.

## Accounts

46. You should check:
  - a. with your financial institution whether direct debiting is available from your account as direct debiting is not available on all accounts offered by financial institutions.
  - b. your account details which you have provided to us are correct by checking them against a recent account statement; and
  - c. with your financial institution before completing the Direct Debit Request if you have any queries about how to complete the Direct Debit Request.

## Confidentiality

47. We will keep any information (including your account details) in your Direct Debit Request confidential. We will make reasonable efforts to keep any such information that we have about you secure and to ensure that any of our employees or agents who have access to information about you do not make any unauthorised use, modification, reproduction or disclosure of that information. We will only disclose information that we have about you: - to the extent specifically required by law; or - for the purposes of this agreement (including disclosing information in connection with any query or claim).

## Notice

48. If you wish to notify us in writing about anything relating to this agreement, you should write to ACTIVE DEBT RECOVERY AUSTRALIA PTY LTD PO Box 6814, Gold Coast Mail Centre, 9726, QLD. We will notify you by sending a notice in the ordinary post to the address you have given us in the Direct Debit Request. Any notice will be deemed to have been received on the third banking day after posting.

*Terms and Conditions and DDR Service Agreement last updated 01 January 2017.*

